IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

MFA.No. 146 of 2003(C)

AGAINST O.P.(M.V.) 309/95 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, ALAPPUZHA.

APPELLANT: PETITIONER:

ANITHA, AGED 31 YEARS,
S/O.DEVIDAS, PARATHARA HOUSE, PARAVOOR P.O.,
ALLEPPEY DISTRICT.

BY ADV. SRI.BEPIN VIJAYAN

RESPONDENTS: RESPONDENTS:

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1. T.P.DEVIDAS, S/O. PARAMESWARAN,
THEEVALAKKATTU VEEDU, WARD NO.II,
CHERTHALA SOUTH PANCHAYAT, ALLEPPEY DISTRICT.

2. THE ORIENTAL INSURANCE CO.LTD.,
PALLIMUKKU BRANCH, ERNAKULAM,
REPRESENTED BY ITS MANAGER.

BY ADV. SRI.ANCHAL C.VIJAYAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 146 of 2003

Dated this the 9th October, 2007.

J U D G M E N T

The petitioner in O.P.(M.V.) No.309/1995, on the file of the Motor Accidents Claims Tribunal, Alappuzha, is the appellant. This appeal is filed challenging the quantum of compensation awarded to the appellant.

2. The short facts necessary for disposal of the appeal are as follows. On 4.12.1994, the appellant sustained injuries in a motor vehicle accident. She filed the Original Petition claiming compensation impleading the owner, as well as the Insurer of the vehicle. In the petition, it was averred that the appellant was a pillion rider in a motor cycle, in which the first respondent was riding, and on account of the rash or negligent act of the first respondent, she fell from the motor cycle and sustained injuries. The first respondent did not appear and contest the matter. Insurer alone contested the matter. It is admitted that the vehicle was covered with a valid policy of insurance. It was contended the petition is a collusive one, and filed

at the instance of the first respondent, who is none other than the husband of the appellant. It was contended that the appellant is a gratuitous passenger and she is not entitled to get compensation. The quantum of compensation claimed was disputed. The Tribunal found that the accident occurred due to the negligence of the rider of the motor cycle. It also found that the appellant was not a gratuitous passenger. The Tribunal also found that the appellant is entitled to get a compensation of Rs.14,243/= and directed the second respondent Insurer to pay that amount. Complaining that compensation awarded is inadequate, petitioner herself has filed this appeal.

3. The learned counsel appearing for the appellant has argued that the quantum of compensation awarded is very low. Counsel for the respondent contented that the appellant is not entitled to get any compensation from the Insurer. It is argued that even if this Court finds that the appellant is entitled to get any compensation, the same is directed to be recovered from the first respondent, who is none other than the husband of the appellant. As I have already stated, the Tribunal found that the appellant was not a gratuitous passenger. The Tribunal also found that Insurer is liable to pay

compensation. The Insurer has not filed any appeal or cross appeal. So, that finding has become final and conclusive, and hence, the Insurer cannot be allowed to raise a contention that it is not liable to pay compensation. Appellant produced medical bills to show that she had spent more than Rs.24,390/= for her treatment. The Tribunal has only awarded an amount of Rs.5000/= for pain and sufferings. An amount of Rs.6000/= was awarded for loss of earning. No compensation was awarded for disability, though the appellant sustained a crack fracture. The reason stated by the Tribunal was that the disability certificate does not show the percentage of disability. I am of the view that the Tribunal ought to have awarded at least an amount of Rs.5000/= on that count, for the disability sustained by the petitioner. So, the appellant is entitled to get an amount of Rs.5000/= more on that count.

In the result, the appeal is allowed in part. An award is passed allowing the appellant to recover an amount of Rs.5000/= as additional compensation from the second respondent, Insurance Company, with 6% interest from the date of petition, till the date of

realisation. The 2nd respondent is directed to deposit the above amount in favour of the appellant. On deposit, the appellant can withdraw the amount.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.146 of 2003

J U D G M E N T

Dated: 9th October, 2007.